

1
2
3
4 UNITED STATES DISTRICT COURT
5 WESTERN DISTRICT OF WASHINGTON
6 AT TACOMA

7 BRENDA M. JOHNSON,

8 Plaintiff,

9 v.

10 CATHOLIC COMMUNITY SERVICES
and NATIVITY HOUSE,

11 Defendants.

CASE NO. C19-5316 BHS

ORDER DISMISSING
PLAINTIFF'S COMPLAINT AND
GRANTING PLAINTIFF LEAVE
TO AMEND

12 This matter comes before the Court on review of Plaintiff Brenda Johnson's
13 ("Johnson") complaint. Dkt. 6.

14 On April 19, 2019, Johnson filed a motion for leave to proceed *in forma pauperis*
15 and a proposed complaint. Dkts. 1, 1-1. On May 13, 2019, Magistrate Judge Creatura
16 granted the motion and recommended a review of the complaint before service. Dkt. 5.
17 Johnson alleges that Defendants Catholic Community Services ("CCS") and Nativity
18 House violated her civil rights and discriminated against her on the basis of a housing
19 decision. Dkt. 6. Based on the attachments to Johnson's complaint, it appears that CCS
20 operates the Nativity House as a 90-day temporary shelter for homeless individuals. *Id.*
21 at 20–22.
22

1 A federal court may dismiss a claim *sua sponte* pursuant to Fed. R. Civ. P.
2 12(b)(6) when it is clear that the plaintiff has not stated a claim upon which relief may be
3 granted. *See Omar v. Sea Land Serv., Inc.*, 813 F.2d 986, 991 (9th Cir. 1987) (“A trial
4 court may dismiss a claim *sua sponte* under Fed. R. Civ. P. 12(b)(6) Such a
5 dismissal may be made without notice where the claimant cannot possibly win relief.”).

6 To state a claim under 42 U.S.C. § 1983, plaintiff must allege facts showing how a
7 defendant caused or personally participated in causing the harm alleged in the complaint.
8 *Leer v. Murphy*, 844 F.2d 628, 633 (9th Cir. 1988); *Arnold v. Int’l Bus. Machines Corp.*,
9 637 F.2d 1350, 1355 (9th Cir. 1981). A person subjects another to a deprivation of a
10 constitutional right when committing an affirmative act, participating in another’s
11 affirmative act, or failing to perform an act which is legally required. *Johnson v. Duffy*,
12 588 F.2d 740, 743 (9th Cir. 1978). Sweeping conclusory allegations against an official
13 are insufficient to state a claim for relief. *Leer*, 844 F.2d at 633. Further, a § 1983 suit
14 cannot be based on vicarious liability alone but must allege the defendant’s own conduct
15 violated the plaintiff’s civil rights. *City of Canton v. Harris*, 489 U.S. 378, 385-90
16 (1989).

17 In this matter, Johnson’s complaint fails to state a claim. First, Johnson does not
18 allege and it does not appear that CCS is a government entity and therefore is not subject
19 to suit under § 1983 because it does not operate under color of law. In order to state a
20 claim against CCS or the Nativity House Johnson must include allegations establishing
21 that one or both should be considered state actors for the purposes of her civil rights
22 claims.

1 Second, Johnson fails to state a claim under 42 U.S.C. § 2000a, which prohibits
2 discrimination in places of public accommodation. Johnson fails to provide sufficient
3 allegations to establish that CCS or the Nativity House is the type of public
4 accommodation that is subject to this anti-discrimination law. For example, it appears
5 that the Nativity House is a free, temporary shelter for homeless persons and does not
6 appear to affect interstate commerce. Further, it is unclear whether CCS or the Nativity
7 House is subject to Washington's landlord-tenant law. Therefore, the Court dismisses
8 Johnson's complaint.

9 "A district court should not dismiss a pro se complaint [with prejudice] unless it is
10 absolutely clear that the deficiencies of the complaint could not be cured by amendment."
11 *Akhtar v. Mesa*, 698 F.3d 1202, 1212 (9th Cir. 2012) (citation and internal quotation
12 marks omitted). The Court finds that it is not absolutely clear that Johnson's complaint
13 may not be cured by amendment. Therefore, the Court grants Johnson leave to amend.

14 Johnson may file an amended complaint no later than June 28, 2019. Failure to
15 file an amended complaint or otherwise respond will result in closing the case without
16 further notice.

17 **IT IS SO ORDERED.**

18 Dated this 4th day of June, 2019.

19
20 

21 BENJAMIN H. SETTLE
22 United States District Judge